IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1859.—Received from the Court of Claims and referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of—

THOMAS FILLEBROWN *vs.* THE UNITED STATES.

1. The petition of the claimant and amended petition.
2. Report of the case of the United States *vs.* Thomas Fillebrown, jr., filed by claimant as evidence, and transmitted to the House of Representatives.
3. Petitioner's brief.
4. United States Solicitor's brief.
5. Opinion of the Court in favor of the claim.
6. Bill allowing claimant four hundred and thirty dollars.

By order of the Court of Claims:

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said Court at Washington, this third day of February, A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk of the Court of Claims.

IN THE MATTER OF THE CLAIM OF THOMAS FILLEBROWN.

To the honorable the judges of the Court of Claims:

The reply of Thomas Fillebrown to the special pleas of the Solicitor of the Court:

This respondent respectfully submits that his claim is founded on a contract made with him by the Hon. Samuel L. Southard, Secretary of the Navy of the United States, and president of the Board of Com-

missioners of the Navy Hospital Fund; that his claim therefore comes within the jurisdiction of your honorable Court; the evidences supporting his claim, and establishing the amount thereof, are, a verdict of a jury in the circuit court of the District of Columbia, a judgment thereon by the said circuit court, and finally a judgment of the Supreme Court of the United States, affirming the judgment below in the case of the United States *vs.* Thomas Fillebrown, reported in the 7th volume of Peters's Report, pages 42 to 50, and the opinion of the Attorney General of the United States, appended to the petition of your respondent.

To these evidences your correspondent begs leave to refer, and he respectfully submits that he is advised and believes that he could, in no possibility, substantiate his claim by any proof stronger or more valid than a verdict of a jury of his country in his behalf, sustained and affirmed by the judgment of the highest judicial tribunal, and the opinion of the law adviser of the government; and he further respectfully submits that the official government records and public reports thereof are the highest evidences of their proceedings, and legal and proper evidence to be received by your honorable court.

All which is respectfully submitted,

THOMAS FILLEBROWN.

JULY 10, 1855.

IN THE UNITED STATES COURT OF CLAIMS.

THOMAS FILLEBROWN *vs.* THE UNITED STATES.

Amended Petition.

Thomas Fillebrown, by way of amendment to his original petition hereinbefore filed, and in order to set forth more specifically the action had upon his claim while pending before Congress, in obedience to the rules prescribed by this court, respectfully represents: That after he was dismissed from his employment by the "commissioners of navy hospitals"—say about the month of May or June, 1829—he was arrested by the government, charged with being a defaulter, and required to give bail in the sum of $5,000 to keep his body from being lodged in prison.

The suit brought against him by the government being slow in its progress, and not likely soon to be tried; and deprived of his accustomed employment, besides his character and reputation resting under charges degrading to him as a man, and feeling also conscious that *he was not a defaulter*, but, on the contrary, that the government justly owed him; and wishing to hasten a final determination of the matter, as well as to relieve himself of the false imputations and charges under which he labored, which greatly obstructed his usefulness to himself and a dependent family, he was advised to, and did, petition to Con-

gress for a thorough investigation of his official transactions, with a prayer to allow him such sum as might appear equitable and just, upon the same principle that had been allowed others who had performed service similar to his own.

But the government refused to permit Congress to dispose of the matter, and forced him to encounter and defend its suit at law in the United States circuit court for the District of Columbia. He thereupon, having no other alternative, prepared for his defence, and, pleading as an off-set his claim for his services rendered, and which had been allowed by the "*commissioners*," but refused by the Fourth Auditor, asked for a judgment in his favor. The cause in due time came on for a hearing, when the proofs, *pro* and *con*, were submitted to a select jury, who rendered a verdict in his favor for the sum of $430, as in his original petition stated.

When he first petitioned to Congress he claimed and expected to get a much larger sum than was allowed him by the jury; and therefore, after the rendition of the verdict in his favor, to wit, in the month of April, 1832, he again petitioned Congress for the payment of the verdict, and for the additional amount thereto, not allowed him by the jury, but asked for in his petition first presented, in January, 1830.

Upon this last petition various reports were made for, and two against, his claim as presented, and a bill was more than once passed in one or the other branches of Congress for his relief; the last of which, having passed in the House, was indefinitely postponed in the Senate.

He presents herewith an extract from the proceedings of the two Houses, marked A.—No. 1 and A.—No. 2, which will be found corroborative of his statements now made.

A.—No. 1.

Extracts from the journals of the Senate.

1st session 21st Congress.

MONDAY, *January* 18, 1830.

* * * * * * * *

Mr. Holmes presented the memorial of Thomas Fillebrown, junior, praying for an equitable settlement of his accounts, for commissions on disbursements made by him from the navy hospital fund by order of the commissioners.

Ordered, That the petition and memorial last mentioned be referred to the Committee on the Judiciary.

* * * * * * * *

TUESDAY, *February* 23, 1830.

* * * * * * * *

On motion by Mr. Rowan,

Ordered, That the Committee on the Judiciary be discharged from

the consideration of the memorials of Thomas F. Gordon, Jasper Harding, and Thomas Fillebrown.

* * * * * * * *

1st session 22d Congress.

TUESDAY, *April* 3, 1832.

* * * * * * * *

Mr. Sprague presented the petition of Thomas Fillebrown, jr., late disbursing agent of the board of commissioners of navy hospitals, praying for additional allowances for his services; and

Ordered, That it be referred to the Committee on the Judiciary.

* * * * * * * *

FRIDAY, *April* 6, 1832.

* * * * * * * *

On motion by Mr. Marcy,

Ordered, That the Committee on the Judiciary be discharged from the further consideration of the petition of Thomas Fillebrown, jr.

* * * * * * * *

1st session 23d Congress.

WEDNESDAY, *December* 18, 1833.

* * * * * * * *

Mr. Sprague presented the petition of Thomas Fillebrown, jr., praying for an additional allowance for disbursing the Navy Hospital fund.

* * * * * * * *

Ordered, That the four petitions last mentioned be referred to the Committee of Claims.

* * * * * * * *

TUESDAY, *January* 7, 1834.

* * * * * * * *

Mr. Bell, from the same Committee, to whom was referred the memorial of Thomas Fillebrown, jr., made a report accompanied by a bill for his relief. The bill was read: and—

Ordered, That it pass to a second reading, and that the report be printed.

* * * * * * * *

FRIDAY, *April* 4, 1834.

* * * * * * * *

On motion by Mr. Sprague,

The Senate resumed, as in Committee of the Whole, the bill for the relief of Thomas Fillebrown, jr., and no amendment having been proposed, it was reported to the Senate; and,

Ordered, That it be engrossed and read a third time.

* * * * * * * *

MONDAY, *April* 7, 1834.

* * * * * * * *

The bill for the relief of Thomas Fillebrown, jr.,

* * * * * * * *

having been reported by the Committee correctly engrossed, were severally read the third time; and,

Resolved, That they pass, and that their respective titles be as aforesaid.

Ordered, That the Secretary request the concurrence of the House of Representatives in said bills.

* * * * * * * *

MONDAY, *June* 30, 1834.

* * * * * * * *

A message from the House of Representatives by Mr. Franklin, their clerk.

Mr. President: The House of Representatives have rejected bills from the Senate of the following titles, viz:

* * * * * * * *

An act for the relief of Thomas Fillebrown, jr.

* * * * * * * *

2d session 23d Congress.

THURSDAY, *January* 15, 1835.

* * * * * * * *

On motion by Mr. Bell,

Ordered, That Thomas Fillebrown, jr., have leave to withdraw from the files of the last session his petition and papers.

* * * * * * * *

2d session 25th Congress.

THURSDAY, *April* 5, 1838.

* * * * * * * *

A message from the House of Representatives, by Mr. Franklin, their clerk.

Mr. President:

* * * * * * * *

They have passed a bill (H. R. 81) entitled "An act for the relief of Thomas Fillebrown, jr.," in which they request the concurrence of the Senate.

The last mentioned bill from the House of Representatives was read the first and second times, by unanimous consent, and referred to the Committee of Claims.

* * * * * * * *

TUESDAY, *May* 22, 1838.

* * * * * * * *

Mr. Merrick, from the Committee of Claims, to whom was referred the bill (H. R. 81) for the relief of Thomas Fillebrown, jr., reported it without amendment.

* * * * * * * *

SATURDAY, *July* 7, 1838.

* * * * * * * *

The Senate proceeded to consider, as in Committee of the Whole, the bill (H. R. 81) for the relief of Thomas Fillebrown, jr.; and

On motion by Mr. Buchanan,

Ordered, That it lie on the table.

* * * * * * * *

1st session 26th Congress.

MONDAY, *March* 30, 1840.

* * * * * * * *

A message from the House of Representatives by Mr. Garland, their clerk.

Mr. President: The House of Representatives have passed bills of the following titles:

* * * * * * * *

H. R. 44. "An act for the relief of Thomas Fillebrown, jr."

* * * * * * * *

The said bills from the House of Representatives were severally read the first and second times, by unanimous consent.

Ordered, * * * * * * *

that bills, numbered from 28 to 48, be referred to the Committee of Claims * * * * * * *

* * * * * * * *

TUESDAY, *March* 31, 1840.

* * * * * * * *

Mr. Hubbard, from the Committee on Claims, to whom was referred the bill (H. R. 44) for the relief of Thomas Fillebrown, jr., reported it without amendment.

Mr. Hubbard also submitted a special report on the subject, which was ordered to be printed.

* * * * * * * *

FRIDAY, *April* 24, 1840.

* * * * * * * *

The Senate proceeded to consider, as in Committee of the Whole, the bill (H. R. 44) for the relief of Thomas Fillebrown, jr.; and—

On motion by Mr. Hubbard,

Ordered, That it lie on the table.

* * * * * * * *

MONDAY, *April* 27, 1840.

* * * * * * * *

The Senate resumed, as in Committee of the Whole, the bill (H. R. 44) for the relief of Thomas Fillebrown, jr.

On motion by Mr. Hubbard—

That the further consideration thereof be postponed indefinitely;

It was determined in the affirmative—Yeas 23; Nays 11.

* * * * * * * *

So it was—

Resolved, That this bill be postponed indefinitely.

Ordered, That the Secretary notify the House of Representatives accordingly.

* * * * * * * *

2d sess. 27th Congress.

TUESDAY, *December* 14, 1841.

* * * * * * * *

Mr. Evans presented the memorial of Thomas Fillebrown, jr., praying the payment of a balance ascertained to be due to him, as agent for the disbursement of the Naval Hospital fund, by a judgment in his favor, in a suit instituted against him by the United States; which was referred to the Committee of Claims.

* * * * * * * *

TUESDAY, *February* 8, 1842.

* * * * * * * *

Mr. Phelps, from the Committee of Claims, to whom was referred the memorial of Thomas Fillebrown, jr., submitted a report accompanied by a bill (S. 158) for his relief.

The bill was read, and passed to the second reading.

Ordered, That the report be printed.

* * * * * * * *

WEDNESDAY, *June* 8, 1842.

* * * * * * * *

The Senate proceeded to consider, as in Committee of the Whole, the bill (S. 158) for the relief of Thomas Fillebrown, jr.; and—

On motion by Mr. Phelps,

Ordered, That it lie on the table.

* * * * * * * *

3d sess. 27th Congress.

THURSDAY, *December* 15, 1842.

* * * * * * * *

On motion by Mr. Evans,

Ordered, That the petition of Thomas Fillebrown, jr., on the files of the Senate, be referred to the Committee of Claims.

* * * * * * * *

WEDNESDAY, *December* 21, 1842.

* * * * * * * *

Mr. Phelps, from the Committee of Claims, to whom was referred the petition of Thomas Fillebrown, jr., submitted a report accompanied by a bill (S. 37) for his relief; which was read, and passed to a second reading.

* * * * * * * *

WEDNESDAY, *December* 28, 1842.

* * * * * * * *

The bill (S. 37) for the relief of Thomas Fillebrown was read the second time, and considered as in Committee of the Whole.

On motion by Mr. Phelps,

Ordered, That it lie on the table.

* * * * * * * *

1st sess. 28th Congress.

MONDAY, *December* 11, 1843.

* * * * * * * *

On motion by Mr. Evans,

Ordered, That the petition of Thomas Fillebrown, jr., on the files of the Senate, be referred to the Committee of Claims.

* * * * * * * *

THURSDAY, *March* 21, 1844.

* * * * * * * *

Mr. Haywood, from the Committee of Claims, to whom was referred the memorial of Thomas Fillebrown, submitted an adverse report; which was ordered to be printed.

* * * * * * * *

MONDAY, *April* 15, 1844.

* * * * * * * *

The Senate proceeded to consider the report of the Committee of Claims on the petition of Thomas Fillebrown, jr.; and—

On motion by Mr. Evans,

Ordered, That it lie on the table.

* * * * * * * *

2d sess. 30th Congress.

WEDNESDAY, *December* 6, 1848.

* * * * * * * *

On motion by Mr. Phelps,

Ordered, That Thomas Fillebrown have leave to withdraw his petition and papers.

* * * * * * * *

FRIDAY, *December* 22, 1848.

* * * * * * * *

On motion by Mr. Phelps,

Ordered, That the petition of Thomas Fillebrown, on the files of the Senate, be referred to the Committee on the Judiciary.

* * * * * * * *

A—No. 2.

Extracts from the Journals of the House of Representatives.

1st sess. 23d Congress.

MONDAY, *April* 7, 1834.

* * * * * * * *

A message from the Senate by Mr. Lowrie, their Secretary:

Mr. Speaker: The Senate have passed bills of the following titles, to wit:

* * * * * * * *

No. 47. An act for the relief of Thomas Fillebrown, jr.

* * * * * * * *

WEDNESDAY, *April* 9, 1834.

* * * * * * * *

Bills from the Senate of the following titles, viz:

* * * * * * * *

No. 47. An act for the relief of Thomas Fillebrown, jr.,

* * * * * * * *

were severally read the first and second time, and referred.

* * * * * * * *

No. 47. To the Committee of Claims.

* * * * * * * *

WEDNESDAY, *April* 30, 1834.

* * * * * * * *

Mr. Grennell, from the Committee of Claims, to whom was referred the bill from the Senate (No. 47) entitled "An act for the relief of Thomas Fillebrown, jr.," reported the same without amendment.

Ordered, That the said bill be committed to a Committee of the Whole House to-morrow.

* * * * * * * *

SATURDAY, *June* 28, 1834.

* * * * * * * *

The House resolved itself into a Committee of the Whole House on bills from the Senate; and after some time spent therein, the

Speaker resumed the chair, and Mr. John Y. Mason reported the said bills, as follows:

* * * * * * * *

No. 47. An act for the relief of Thomas Fillebrown, jr., without amendment.

* * * * * * * *

The bill from the Senate (No. 47) entitled "An act for the relief of Thomas Fillebrown, jr.," was read the third time.

And after debate on the said bill—

The previous question was moved by Mr. Mann, of New York, and was demanded by a majority of the members present.

The said previous question was put, viz: Shall the main question be now put?

And passed in the affirmative.

The main question was then put, viz: Shall the bill pass?

And passed in the affirmative.

* * * * * * * *

NOTE.—This bill is entered on the Journal as having passed the House of Representatives. It is an error; the bill was *rejected.*

1st sess. 24th Congress.

WEDNESDAY, *December* 16, 1835.

* * * * * * * *

Mr. Evans presented a memorial of Thomas Fillebrown, jr., of the city of Washington, praying for the passage of an act granting to him the amount of a certain judgment rendered in his favor for services as clerk in the Navy Department, together with costs of suit and interest upon the said judgment.

* * * * * * * *

Ordered, That the said petitions and memorials be referred to the Committee of Claims.

* * * * * * * *

2d sess. 24th Congress.

MONDAY, *December* 12, 1836.

* * * * * * * *

The under mentioned petitions and memorials heretofore presented, were again presented and referred to the Committee of Claims, viz:

By Mr. Evans: The memorial of Thomas Fillebrown, jr., presented December 16, 1835.

* * * * * * * *

THURSDAY, *March* 2, 1837.

* * * * * * * *

Mr. Grennell, from the Committee of Claims, made a report on the petition of Thomas Fillebrown, accompanied by a bill (No. 968) for his relief; which bill was read the first and second time, and committed to a Committee of the Whole House to-day.

* * * * * * * *

2d sess. 25th Congress.

MONDAY, *December* 11, 1837.

* * * * * * * *

On motion it was—

Ordered, That the several memorials and petitions presented to the House of Representatives at the last Congress, and upon which favorable reports were made, and on which the House did not finally act, be again referred to the committees to which said memorials and petitions were heretofore severally referred.

Under this order, the petitions of the under mentioned persons were referred to the Committee of Claims, viz:

* * * * * * * *

Thomas Fillebrown, jr.

* * * * * * * *

THURSDAY, *December* 14, 1837.

* * * * * * * *

Mr. Whittlesey, of Ohio, from the Committee of Claims, reported sundry bills, to wit:

* * * * * * * *

No. 81. A bill for the relief of Thomas Fillebrown, jr.

* * * * * * * *

Which several bills, commencing with No. 15 and ending with No. 88, were read the first and second time, and were severally committed to a Committee of the Whole House to-morrow.

* * * * * * * *

FRIDAY, *January* 12, 1838.

* * * * * * * *

The House again resolved itself into a Committee of the Whole House on sundry bills, viz:

* * * * * * * *

and after some time spent in Committee of the Whole House, the Speaker resumed the chair, and Mr. Calhoun, of Massachusetts, reported that the committee had made some progress on bills No. 81 and 91, and directed him to ask leave to sit again thereon * *

* * * * * * * *

Ordered, That the Committee of the Whole House have leave to sit again on bills No. 81 and 91.

* * * * * * * *

SATURDAY, *March* 31, 1838.

* * * * * * * *

The House resolved itself into the Committee of the Whole House on sundry bills, viz:

* * * * * * * *

No. 81. A bill for the relief of Thomas Fillebrown, jr.

* * * * * * * *

And after some time spent in committee, the Speaker resumed the chair, and Mr. Lyon reported bill No. 81 without amendment, * * * * * * * * * *

Ordered, * * * * * * * * * that bill No. 81, for the relief of Thomas Fillebrown, jr., be engrossed and read a third time on Monday next.

3d sess. 25th Congress.

FRIDAY, *December* 21, 1838.

* * * * * * * * *

Mr. Chambers, from the Committee of Claims, reported several bills, viz:

* * * * * * * * *

No. 900. A bill for the relief of Thomas Fillebrown, junior, accompanied by a report in writing in each case; which bills were severally read the first and second time, and committed to a Committee of the Whole House to-morrow.

* * * * * * * * *

FRIDAY, *February* 1, 1839.

* * * * * * * * *

The House resolved itself into a Committee of the Whole House on sundry bills, viz:

* * * * * * * * *

No. 900. A bill for the relief of Thomas Fillebrown.

* * * * * * * * *

And after some time spent in Committee of the Whole House, the Speaker resumed the chair, and Mr. Lincoln reported as follows:

That on Nos. * * * 900 * * * the committee had made progress, and directed him to ask leave to sit again thereon.

* * * * * * * * *

Ordered, That the Committee of the Whole House have leave to sit again on the bills on which progress has been reported.

* * * * * * * * *

1st sess., 26th Congress.

SATURDAY, *January* 4, 1840.

* * * * * * * * *

Under the general order of this day, the petitions and papers of the under-mentioned persons were referred to the Committee of Claims, viz:

* * * * * * * * *

Thomas Fillebrown, jr.

* * * * * * * * *

SATURDAY, *February* 29, 1840.

* * * * * * * *

Mr. Giddings, from the Committee of Claims, reported sundry bills, viz:

No. 44. A bill for the relief of Thomas Fillebrown, jr.

* * * * * * * *

accompanied by a report in each case; which bills were severally read the first and second times, and committed to a Committee of the Whole House to-morrow.

* * * * * * * *

FRIDAY, *March* 13, 1840.

* * * * * * * *

The House resolved itself into a Committee of the Whole House on sundry bills, viz:

* * * * * * * *

No. 44. A bill for the relief of Thomas Fillebrown, and, after some time spent in Committee of the Whole House, the Speaker resumed the chair, and Mr. Davee reported that the Committee had according to order had the said bill under consideration, and finding itself without a quorum had risen, and directed him to report that fact to the House.

* * * * * * * *

FRIDAY, *March* 20, 1840.

* * * * * * * *

The House resolved itself into a Committee of the Whole House on sundry bills, viz:

* * * * * * * *

No. 44. A bill for the relief of Thomas Fillebrown.

* * * * * * * *

And after some time spent in Committee of the Whole House, the Speaker resumed the chair, and Mr. Davee reported as follows:

* * * * * * * *

That Nos. * * * 44 * * * *

he was directed to report to the House without amendment.

* * * * * * * *

SATURDAY, *March* 21, 1840.

* * * * * * * *

The House proceeded to the consideration of the bill (No. 44) for the relief of Thomas Fillebrown, junior, and the question was put that the bill be engrossed and read a third time.

And it passed in the affirmative—Yeas 80; Nays 62.

* * * * * * * *

Ordered, That the bill be read a third time to-day.

* * * * * * * *

SATURDAY, *March* 28, 1840.

* * * * * * * *

An engrossed bill, (No. 44,) entitled "An act for the relief of Thomas Fillebrown, junior," was read the third time.

And after debate, the previous question was moved by Mr. A. Smith, was demanded by a majority of the members, and put, viz: Shall the main question be now put?

And it passed in the affirmative.

The main question was then put, viz: Shall the bill pass?

And passed in the affirmative—Yeas 74; Nays 63.

* * * * * * * *

Ordered, That the clerk request the concurrence of the Senate in the said bill.

* * * * * * * *

WEDNESDAY, *April* 29, 1840.

* * * * * * * *

A message from the Senate by Mr. Dickins, their Secretary.

Mr. Speaker: * * * * * * *

* * * * * * * *

The Senate have *postponed indefinitely* bills of this House, of the following titles:

* * * * * * * *

No. 44. An act for the relief of Thomas Fillebrown.

* * * * * * * *

OFFICE HOUSE OF REPS. U. S.,
November 19, 1855.

I hereby certify, that the foregoing nine pages contain true extracts from the Journals of the House of Representatives, relative to the petition of Thomas Fillebrown, junior.

Attest: W. V. McKEAN,
Chief Clk. Office H. R. U. S.

Your petitioner submits whether it is possible, or would be rational and just, that the government should now claim to re-investigate his claim in its legislative department, after he having once applied to it for that purpose, and it refusing to do so, forced him to contest and try his claim in its judicial forums; and after he had there succeeded, still further prosecuted its cause before the Supreme Court, where and when the judgment in his favor was affirmed.

He submits, whether the government can claim the moral, legal, or constitutional right to subject him to the expense, burden, and delay of an action at law, of its own institution, which it prosecuted to a final appeal, thus depriving him of his just rights, and now, or at any time since the rendition of that verdict, require him to reprove his claim. in order and for no other reason than to comply with its assumed technical sovereignty, when he had once duly presented his

claim for the action of the legislative department, which, as before stated, it declined to take charge of.

He submits, also, whether it is, or ever was, competent for Congress, as a legislative body, to review or reconsider the verdict of a jury, which is a question solely of judicial and not legislative cognizance; and pleads in this behalf the 7th article of the amendment to the Constitution as absolutely prohibiting the same, and denies that either Congress or this court, "sitting as a court of the United States," can, either in a legislative or judical capacity, review the verdict of a sworn jury, or any facts tried by the same.

He claims that he is entitled to interest on the verdict from the date of its rendition, as a sum then liquidated and ascertained to be due in the most solemn and authentic manner known to our laws, which the government had no just grounds to refuse to pay; but having, by its arbitrary and unjust procedure, deprived him of the use of his means, he claims that interest is justly, legally, and morally due, and should be paid just as much as the principal sum.

He, therefore, prays for a decree or award for the full amount of the principal sum of $430, and interest from date of the verdict, on the 26th day of May, 1831, and for all just and equitable relief.

THOMAS FILLEBROWN.

Sworn to and subscribed before me, this first day of March, 1856,

HY. L. HARVEY,

Justice of the Peace, Washington Co., D. C.

IN THE UNITED STATES COURT OF CLAIMS.

THOMAS FILLEBROWN *vs.* THE UNITED STATES.

Remarks in behalf of petitioner.

The arguments submitted in the case of Mary Reeside embrace about all we could have to say in the present. Both being the verdict of a jury and judgment of a court, (so far as a judgment could be technically rendered,) upon offset pleaded to a suit instituted by the United States against a citizen, are consequently dependent upon the same principles of constitutional and municipal law. The only difference between the cases consists in the manner in which they originated, the Reeside case being principally for money advanced and negotiated for the use of the government, or for drafts and acceptances of the Post Office Department unpaid, while the present is entirely for service performed. Both cases have also been before the Supreme Court upon writ of error; the one having been dismissed for a failure to prosecute, while the other has been passed upon and affirmed by that tribunal. They therefors stand before you in equal dignity, so

far as their legal sanction is concerned, and the arguments we have submitted apply equally to both. We shall consequently feel it necessary to say but little in addition thereto in support of the present.

The record in this case shows that the United States instituted suit against Fillebrown on the 23d day of May, 1829, upon the alleged grounds that he was a defaulter, and had improperly appropriated the government money, to the extent of $2,700 84, for which sum he was sued in the United States circuit court for the District of Columbia and required to give bail to discharge the judgment of the court, or surrender his body for incarceration till it was satisfied or should be pleased to liberate him.—(See the record, p. 5.)

At this stage of the proceedings the matter was before the government's judicial tribunals, placed there at its own instance.

Fillebrown tells you that having a dependent family upon his hands to support, and being dismissed from his accustomed employment, and his character stigmatized with the charge of defalcation resting upon it, he found it difficult to procure occupation, or obtain means to relieve the wants of his family, while subject to the prejudice inseparable from one in his situation. And the law being slow in its progress, he resolved to petition Congress to take charge of his case and settle his account, knowing that he was not a defaulter, but that the government justly owed him. Hence, he did, on the 18th day of January, 1830, present his memorial to the two Houses of Congress, praying their immediate action thereon.—(See amended petition, p. 2.)

But the suggestion being made that his case was in the hands of the judiciary, Congress refused to act; and disappointed, and writhing under the burden of oppressive delay, he was forced to abide the tedious steps of the law. He therefore, on the first Monday in May, 1830, plead to and joined issue with the government, upon its demand. (See record, p. 5, *supra.*)

All hopes of any other settlement than a legal contest being then destroyed by the choice and action of the government, the defendant (Fillebrown) proceeded to prepare his facts, to submit before the court and jury when the cause should come to a hearing.

With this object ln view, the petitioner had his accounts with the government, as its agent and employé, fully stated and properly vouched, showing his full service and moneyed transactions and disbursements for the department under which he had been acting, and prepared his proof to sustain the same.—(See record, p. 7.)

The case came to a final hearing on the 26th day of May, 1831, when the jury, under the instructions of the court, rendered a verdict in favor of Fillebrown, and certified, upon the plea of offset, "*that the United States are indebted to the said Fillebrown in the sum of four hundred and thirty dollars.*"—(See record, p. 12.)

After the rendition of the verdict, the petitioner supposed that the amount ascertained by it to be due him would be promptly paid, and thereupon demanded the same of the Secretary of the Navy; but, much to his astonishment, that officer, instead of satisfying the petitioner's expectations, addressed a letter to the Attorney General, the Honorable R. B. Taney, asking his views upon the subject, as to whether it

would be legal for him to do so, when the latter functionary, being then the chief law officer of the government, responded in writing, as set forth in the original petition.

The claim not being paid, the petitioner again memorialized Congress on the 3d day of April, 1832, but it appears from the documents that he claimed a much larger sum than was allowed him by the jury, and that his prayer for relief was not confined to the verdict alone. This last named memorial was constantly pressed before the legislative department of the government, till the 22d of December, 1848, when it was last presented to the Senate.—(See amended petition, A. No. 1, pages 1 to 7.)

Various reports were made upon the memorial as last presented—some for allowing the full amount claimed, and some against it. We perceive but one, however, that was made against the payment of the verdict, but which was not finally acted upon in the Senate.

We concede that it was in the power of Congress to consider the facts and reject at their pleasure, if they deemed it proper, the amount claimed by the petitioner beyond the sum stated in the verdict, and are, therefore, not seeking to claim anything more than the assessment of the jury.

But we claim that it is equally clear, that the sum of $430, stated in the verdict of the jury, ought to have been paid, and is now due—a fact which neither Congress nor any other tribunal has any authority to question, for reasons we have attempted to elaborate, upon the plainest principles of the Constitution, law and justice, in the argument we have submitted in the case of Mary Reeside.

This case illustrates the precise ground we have contended for, on this particular point in the Reeside case, and which we think is unanswerable in point of authority. That is, when the government sued Fillebrown, it was proper and legal for him to plead, and prove any offset he might have; and that whatever was the finding of the jury, one way or the other, was and is conclusive as to the facts upon the offset so pleaded; and the jury having rendered a verdict upon those *facts* for the sum of $430, it was only competent for the government to examine their finding according to the common law mode—new trial and writ of error. These being exhausted, and the verdict still standing, leaves an established debt of record, ascertained by the highest judicial authority, an authority created co-equal with that granted to Congress, and over which the latter can exercise no apellate or revisory power whatever.

When, however, the petitioner asked for a much larger sum than the verdict of the jury, upon other and distinct facts not passed upon at the trial, it was then the privilege and duty of Congress to consider those facts, and determine whether they meritoriously—*but not as a matter of legal right*—entitled the petitioner to relief; because the facts which were the foundation of the claim, beyond the amount of the verdict, had not been determined upon by the jury, and hence it was no infringement upon, nor impeachment of, the result of their deliberations, and was therefore a question which Congress might properly look into.

We think the committee which reported on this claim at 3d session of the 25th Congress took exactly the right views, so far as the questions involving the authority of Congress were concerned, part of which we will here quote.

"In May, 1829, he" [Fillebrown] "was removed from the several offices which he held, and was arrested and held to bail, at the suit of the United States, for a large sum, including the amount which he had been allowed on settlement of his accounts, and that which he had retained as compensation for his services as disbursing agent.

"Upon the trial of that suit, a verdict and judgment were rendered in favor of the petitioner, and the jury certified a balance of four hundred and thirty dollars to be due him from the United States for his commissions, at the rate of one per cent. upon his disbursements of the funds aforesaid, exclusive of the allowance made to him by the commissioners upon the settlement of his first account.

"He now claims, in addition to that sum, a further compensation of $3,582, being one and a half per cent. on the whole of his disbursements in said agency. In support of this additional claim, he urges the promise of 'a suitable compensation' for his services when he entered upon the duties of his agency.

"The committee think the amount charged by the petitioner in his account, which was allowed, and his subsequent claim to retain one per cent., are conclusive of his own understanding of what would be 'a suitable compensation' for making the disbursements committed to his charge.

"The evidence in this case establishes the justice of the petitioner's claim to the sum of four hundred and thirty dollars, and the committee report a bill for his relief."—(See Report No. 2, 3d sess. 25th Congress.)

Urging nothing in reference to the merits of Fillebrown's claim set forth in his memorial, beyond the amount stated in the verdict, we think the committee, in making the above report, drew the proper line of distinction touching their constitutional and lawful authority to act; that they had the right to consider the facts as to meritoriousness of the claim beyond the verdict, and to reject the application if they chose, but that they had no right to attempt a re-consideration of the facts upon which the verdict was founded, and that they properly reported a bill for its payment. This we think was the true interpretation of the Constitution, and was paying proper deference to the requirements of the 7th amendment, which so emphatically forbids the re-examination of any fact once tried by a jury, as was the case in the rendition of this verdict.

But a most remarkable feature in this case is this: The documents show you that Fillebrown used his utmost endeavors to have it taken charge of by Congress after the suit was brought, and he had given bail for his appearance. He did not wish to be subject to the "law's delay," but wished Congress to make immediate inquiry into his conduct, and determine whether he was or was not a defaulter, and, if not, to restore him to his character with an honorable acquittal, and to pay him what he should be able to show the government owed him.

But this Congress very distinctly, as well as properly, refused to do. The court was certainly the proper forum in which to dispose of the questions of law and legal rights involved, and Congress determined they should do so. And then, when the result should be so emphatically determined against the government in both circuit and supreme courts, is it not both monstrous and startling to hear it hinted that the decision and verdict of the court and jury should not be respected, or that it was not conclusive?

Fillebrown's memorial presented on the 18th of January, 1830, was rejected because a suit was pending. He was forced to defend that suit, and a verdict and judgment was ultimately rendered in his favor. Upon that verdict and judgment the United States sued out their writ of error to the Supreme Court, where Fillebrown was again forced to incur the expense of employing counsel to defend his case; when, after a full hearing, the proceedings in the circuit court were affirmed. Certainly, we must suppose that the government in taking these steps, and imposing such onerous burdens upon Fillebrown, meant to abide the result; if not, then the most infamous fraud must have been contemplated by those who conducted the proceedings, a fraud which can never receive the sanction of this court aside from any constitutional or legal inhibition of the right to review it.

In the record of the trial in the circuit and supreme courts, you have all the facts as stated, proven and passed upon, in those tribunals. The legality of each step, and merits of every fact, have been passed upon and settled. Did the right otherwise exist to review the same, you could not expect to alter the figures and dates before you, which are not even disputed, nor could you expect the oral testimony to be different, were the persons now all living and accessible who gave the same. And were not this the case, could you, under any circumstances, give as much credit to oral testimony in the year 1856, pertaining to facts which transpired in 1830, as you could to the testimony of the same witnesses, testifying concurrent with the date of these facts, when everything was fresh in their memory? Certainly you could not, and this reason alone, should stop further inquiry.

After the rendition of the verdict, and its affirmation by the Supreme Court, the whole question of right, both as to the law and the facts, was wholly determined, so far as there existed, or is known to our institutions, any authority to re-examine it; nor can there be any reason assigned to the contrary, that would not as readily uproot and unsettle every vestige of principle or justice upon which any transaction to which the government may be a party can be founded.

The solicitor remarks in the conclusion of his brief, that this case, though trifling within itself, is the forerunner of others of greater magnitude, and that, for that reason, he attributes great importance to it.

While such an avowal does not reach nor alter the merits of the case in any way, we cannot refrain from remarking that we are aware of none but this and the Reeside judgment which are unpaid, and for the credit of the government we hope there is no more. It would indeed be a singular fact if there did exist many verdicts of juries

and judgments of the courts against the government unpaid. If there be, there is certainly a radical defect in the administration of justice at work somewhere, or for some cause which the people who support this *republic* are not aware of. We do not believe, so far as we can learn, that there are any others except these two; but if there were a thousand, they would only constitute so many just demands which the government is most arbitrarily repudiating.

Upon this claim, the petitioner insists he is entitled to interest, from the date of the verdict on the 26th day of May, 1831.

The only ground upon which we can urge the payment of interest as a legal right, is the fact that it is the verdict and judgment of a United States court and jury; and which we think ought to be sufficient to require it. Upon this subject we respectfully refer the court to our argument, and the authorities cited, upon the payment of interest in the Reeside case. It is a universal principle in the jurisprudence of all civilized governments, that the judgments and decrees of their judiciary shall bear interest from the moment of their rendition. We can conceive of no reason why this government should desire to repudiate those plain rules of a law so essential in meting out that "justice" which it is pledged to secure to its citizens, and which alone can enable it to render them "just compensation" for their "private property appropriated to public use."

STEWART & COXE,
For petitioner.

IN THE COURT OF CLAIMS.—No. 1.

ON THE PETITION OF THOMAS FILLEBROWN.

Brief of the United States Solicitor.

This is a claim for $430, on account of disbursements alleged to have been made by the claimant sometime between the years 1825 and 1829, of navy hospital funds. The petitioner was a clerk in the Navy Department at the time, and in receipt of one thousand dollars per annum salary. The navy commissioners, of which the Secretary of the navy was the chief, and the Secretaries of the Treasury and War Departments were assistants or advisers, made the claimant secretary of their board, and contracted for his compensation at $250 per annum. He was afterwards required to pay out funds belonging to the navy hospitals, for which he charged one per cent. commission.

The questions of the power of the commissioners so to employ the claimant, the fact of such employment, the performance of the service, and the rates of compensation, were tried in a suit at law before the circuit court of the District of Columbia, where they were determined for the petitioner; and, on appeal, the decision of the circuit court was affirmed by the Supreme Court. On the principles of that

decision, and according to the finding of the jury, the balance claimed by the petitioner was due.

But it is contended for the United States that this Court is not concluded by the finding of a jury or the decisions of any court. This is not an inferior tribunal to the Supreme Court of the United States, but to Congress, and is to be governed in its decisions and course of procedure, not by the decisions of the courts, but by the principles applicable to the legislative body.

All the facts on which this claim is founded must be submitted to this Court, and all the questions passed upon by the courts of law are here again to be considered as open and original questions, as Congress, to which this Court is auxiliary and subordinate, not only has the right to do, but is bound to do before acting.

It was contended, on the hearing of this case before the Supreme Court, that the act of 1797 (United States Laws, p. 512) repealed so much of the act of 1795 as gave the Comptroller final jurisdiction in the settlement of the accounts of disbursing officers.

This proves nothing in the case before us. It is admitted, that if either the Comptroller or the courts decide that an officer in possession of funds is entitled to keep them, the government cannot compel him to pay them over. Congress has, by law, committed so much to them, and enabled them to pass authoritatively and finally upon the question of whether there is anything due from the individual to the government; but it has committed no power to either to pass on the alleged indebtedness of the government to an individual. It has not delegated that power, and cannot. By the Constitution, Congress alone can have the ultimate decision of that question; Congress alone can appropriate the public money, and the power of appropriation involves of necessity the duty of considering the propriety or justice of the appropriation, and therefore must investigate the facts and interpret the laws and contracts which occasion the demands for money from the public treasury. This power cannot be delegated by Congress without abdicating its office. It follows, therefore, that while Congress may, and unquestionably would, pay great deference to the opinion of the Supreme Court in the interpretation of a law, yet when an appropriation is asked, Congress must interpret for itself. And this Court, instituted by Congress to assist in the investigation of questions involving appropriations, to perform its duty and render the assistance expected from it, must investigate for itself and judge for itself; and accordingly it is required to present, in its report to Congress, *the facts* of each case, with its opinion thereon, together with all the evidence and the arguments of counsel. There are cases in which, should Congress fail to appropriate, it would be a virtual dissolution of the government, and the failure would in such cases be a failure in constitutional duty. This remark applies to appropriations for the support of the government, according to the plain requirements of the Constitution and the laws; and yet, even in such cases, it is with Congress to judge; and it is only because the duty is so plain, and the laws so explicit in their requirements, that we are enabled to say that Congress would be wanting in its duty if it failed

to pass the laws. It belongs to no other branch of the government to define the duties of Congress, or the occasions on which it shall exercise the powers belonging to it, and so it is of the co-ordinate branches of the government. They must in every case judge for themselves within their proper spheres.

It is for the legislature to pass laws, the judges to interpret them when suits arise, and the executive to execute them. In the performance of these several duties, it will often happen that these several departments of the government are called on to interpret the same laws, but the action of each is independent, within its proper sphere. Neither is bound to conform to the opinion of the other, where, by the Constitution and laws, such opinion is not coupled with power to enforce it; and, in the absence of such power, such opinions are entitled to respect so far only as they are supported by reason in the minds of those on whom the responsibility of action is devolved.

I maintain, therefore, it is not sufficient to authorize this Court to give a favorable judgment for the claimant, that he shall produce and show to the Court the judgment of the Supreme Court on the same legal questions, and the verdict of a jury on the same matters of fact; because, although the opinion and verdict are conclusive on all matters within the jurisdiction of the court, they are are not so as respects the same questions of law and fact arising out of the jurisdiction of the court; and therefore, while the record of the court here relied on is evidence which closes and balances the account of the claimant with the Treasury Department, because the law gives that effect to it, it has not such force before this Court, being merely an argument—of great authority, I admit—but still an argument which is not conclusive, and which, in this case and many others, has failed to satisfy Congress. The claimant must then set forth in his petition the particulars of the service he has rendered, for which he claims compensation, the law which authorizes his employment and compensation, and the amount remaining due and unpaid which he claims, and not the judgment of a court where he was sued as a debtor, and wherein a portion of the compensation was allowed by the court to set off the indebtedness charged against him.

This claim is trifling in itself; but it is the forerunner of others, involving hundreds of thousands, and therefore I attach great importance to the question I have here endeavored to present.

M. BLAIR.

IN THE COURT OF CLAIMS.

THOMAS FILLEBROWN *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

In the year 1829 the United States instituted a suit against the petitioner in the circuit court for the District of Columbia. This suit was so proceeded in that on the 26th day of May, A. D. 1831, a ver-

dict was rendered in favor of the defendant, that he did not assume upon himself in manner and form as the United States had complained, and thereupon the court gave judgment that the United States take nothing by their writ and declaration, and that the petitioner go thereof without day, &c. The jury, at the time of bringing in their verdict, filed in court the following certificate: "The jurors empannelled in the case of the United States *vs.* Thomas Fillebrown, jr., find, upon examining the accounts filed, that the United States are indebted to the said Fillebrown in the sum of four hundred and thirty dollars." No further action was taken thereon by the court.

The petitioner claims the sum of $430.

The certificate of the jury is no evidence whatever that the amount embraced by it is due the petitioner. The certificate is not a verdict either in form or substance, and the court took no further action upon it than merely to permit it to be filed.

There was, however, evidence submitted to the jury in that case which we think is proper evidence in this case, in favor of the original merits of the petitioner's claim. This evidence consists of a deposition of Samuel L. Southard, who is now dead, and documents from the executive departments of the government. The deposition of S. L. Southard is proper evidence because the case in which it was taken and read was between the parties in this case, and in reference to the same subject-matter, and the witness is dead. The documentary evidence is in itself properly admissible in this case.

The case of the United States *vs.* Fllebrown, above mentioned, was carried to the Supreme Court and is reported in 7 Peters, 28. The principles of the petitioner's claim as it now stands before this court were settled by the Supreme Court.

The matters in dispute between the parties in the above mentioned suit were as follows:

1. The United States claimed against the petitioner for overcharge of salary from May 6 to November 7, A. D. 1825, six months one day at $250, making $125 68.

Mr. Southard proves that the petitioner was duly appointed secretary of the board of commissioners of the navy hospital fund, at a salary of $250 a year; that some time after his appointment, when it was considered proper to keep separate records and files of whatever related to this fund, he was directed to procure the necessary books and make the necessary examinations into the records and files of the navy office and Fourth Auditor's office, and do whatever was required to place the papers belonging to the fund in a proper condition; and that for this service he was allowed to ante-date his appointment six months and to draw a warrant for his salary for that period. Upon this item the Supreme Court remark: "With respect to the $125 claimed for six months' salary, Mr. Southard is very explicit. This allowance, he says, was made for extra services, and related to a time previous to his appointment, and that the allowance had the approbation of the board. This was a service not required or considered by the board as coming within his duty as secretary under his appointment, and a stipulated compensation agreed to be paid him therefor.

It is not perceived what possible objection can exist against his being allowed this stipulated sum. Whether or not it was more than a just compensation for his services, is a matter which this court cannot inquire into. Indeed, that has not been pretended, if he is entitled to anything beyond his salary of $250."—(7 Peters R., 45.)

2. The United States disallowed the petitioner's claim of one *per centum* on the disbursements made by him as disbursing agent of the board, amounting to the sum of $2,007 84.

In relation to this item the Supreme Court say:

"With respect to the commissions, Mr. Southard says, that subsequent to the appointment of the defendant as secretary, the commissioners were enabled, by appropriations, and collecting money belonging to the fund from various sources, to proceed to apply the funds to the establishment of navy hospitals, as required by the act of Congress; that these funds were placed in the hands of the treasurer of the United States, as the treasurer of the commissioners; and that, in collecting and disbursing the fund, it was found indispensable to have an agent, who should attend carefully to it and be responsible to the board; that this did not belong to the duties of the secretary, but that it was thought best to give the agency to him on account of his acquaintance with every part of the interest of the fund, and his fitness to discharge the duty; that he was appointed the agent with the understanding that he should receive a suitable compensation for the services he should render in that capacity; that it was the understanding of the commissioners that he should receive compensation in the mode and according to the practice of the government in other similar cases; that he is under the impression that this was to be by a percentage on the money disbursed, and that he is also under the impression that he did, by the authority of the board, allow one or more of the accounts presented by the defendant in conformity to the facts and principles he has detailed.

"From this testimony, it is very certain that Mr. Southard considered the agency of the defendant in relation to the fund as entirely distinct from his duty as secretary, and for which he was to have extra compensation; and it is fairly to be collected from this deposition that all this received the direct sanction of all the commissioners. But whether it did or not, it was binding on the board; for the Secretary of the Navy was the acting commissioner, having the authority of the board for doing what he did, and his acts were the acts of the board in judgment of law. It was, therefore, an express contract entered into between the board or its agent and the defendant; and it was not in the power of the board, composed even of the same men, after the service had been performed, to rescind the contract and withhold from the defendant the stipulated compensation. There is no doubt the board, composed of other members, had the same power over this matter as the former board. But it cannot be admitted that it had any greater power. The rejection, therefore, of these claims of the 7th of September, 1829, after all the services had been performed by the defendant, can have no influence on the question."—(7 Peters' R., 45, 46.)

Again: "The authority of the commissioners to appoint a secretary has not been denied; and this same authority must necessarily exist to appoint agents and superintendents for the management of the business connected with the employment of the fund; and which, in the absence of any regulation by law on the subject, must carry with it a right to determine the compensation to be allowed them."—(7 Peters' R., 44.)

Again: "If the board had authority to employ the defendant to perform the services which he has rendered, and these services have been actually rendered at the request of the board, the law implies a promise to pay for the same."—(7 Peters' R., 48.)

We follow the views of the Supreme Court as to the effect of Mr. Southard's testimony, and are, of course, bound by the principles of law established by that court.

The first item above mentioned was	$125 68
The second item above mentioned was	2,007 84
Making a total of	2,133 52
From which the United States deducted for salary from 6th February, A. D. 1829, to the 16th of May, A. D. 1829, which had not been charged in the account rendered by the petitioner, three months eleven days	70 14
Leaving a balance claimed by the United States of	2,063 38

The petitioner, on his part, insisted that he was entitled to his salary, and in addition thereto to a commission of one *per centum* on his disbursements. He therefore claimed as follows:

(1.) His salary from February 7 to May 16, A. D. 1829—3 months 10 days, at $250 a year. (This the government conceded to be just, and allowed, therefore, as above stated, $70 14.)		$69 36
(2.) Commissions on the following disbursements, at one *per centum:*		
1829, March 3. To T. Newton, for land	$9,000	
April 4. To J. Haviland, (advance)	10,000	
April 14. To W. Stickland, (advance)	10,000	
	29,000	$290 00

The testimony of Mr. Southard and the documentary evidence show that these disbursements were made by the petitioner as the disbursing agent of the board.

(3.) For short charge of commissions in account rendered A. D. March 2, 1829, to wit:

On $207,848 48, at one per cent	$2,078 48	
Deduct amount charged and received	2,007 84	
		70 64
Making his whole claim the sum of		$430 00

The documentary evidence shows that besides the above mentioned sums paid to T. Newton, J. Haviland, and W. Stickland, respectively, the petitioner disbursed also the above named sum of $207,848 48.

It is apparent, therefore, that the only matters really in dispute between the parties were, (1,) the above mentioned sum of $125, and (2) the commissions claimed by the petitioner; and that if the petitioner was entitled to these two items, he is now entitled to the above mentioned sum of $430, the amount claimed by him.

That the petitioner was entitled to the above named sum of $125 is clear, we think, beyond dispute.

It is equally clear, too, from the evidence in this case, and the legal principles adjudicated by the supreme court, that the petitioner was entitled to a commission of one *per centum* on the disbursements made by him as the disbursing agent of the board.

We are, therefore, of the opinion that the petitioner is entitled to relief, and shall report to Congress a bill in his favor for the sum of $430.

A BILL for the relief of Thomas Fillebrown.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, directed, out of any money in the treasury not otherwise appropriated, to pay to Thomas Fillebrown the sum of four hundred and thirty dollars in full, for salary as secretary of the board of commissioners of the navy hospital fund, from February 7, to May 16, A. D. 1827, and for commissions on the disbursements of said fund between the years 1825 and 1829.